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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.NO. 2309/92

New Delhi this the 16th Day of November, 1993.

Hon'ble Sh. B.N. Dhoundiyal, Member(A)

Sh. R.C. Sachdeva
S/O Sh. J.L. Ram Lal Sachdeva,
R/O 30, Panchdeep Society,
P.O. Bodella Vikaspuri,
New Delhi-110 018. Petitioner

(Sh. Ashish Kalia, proxy counsel for Sh. R.L. Sethi)

Versus

1. Union of India
through the Secretary,
Dept. of Telecommunication,
Sanchar Bhavan, Ashoka Road,
New Delhi-110 001.
2. The District Manager,
Telecom, Rohtak. Respondents

(None for the respondents)

O R D E R (ORAL)

This O.A. has been filed by Sh. R.C. Sachdeva seeking directions to the respondents to sanction him leave on medical grounds for the period from 1.9.1986 to 16.11.1988 and to release payments for this period with interest.

The material averments made in the application are these. The applicant was working as a Telephone Operator under District Manager, Telecom, Rohtak and sought voluntary retirement on 30.04.1990 with three months notice. This was not accepted as a disciplinary case under Rule 14 was stated to be pending against him. This related to him absence from duty without any intimation w.e.f. 1.9.1986 to 5.8.1989 except 27.11.1988 to 30.11.1988. The

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applicant claims to have submitted medical certificates in support of his application for leave during the period. His representation was accepted and the charges were dropped vide order dated 22.12.1990. However, in the settlement dues flowing from the voluntary retirement he noticed that the period from 1.9.1986 to 16.11.1988 when he was on medical leave had been treated as 'Diesnon'. He immediately made a representation which was not replied to.

The learned counsel has pleaded that this is the period for which a chargesheet was given to the applicant and the charges were later dropped. However, a reading of the order dated 22.12.1990 shows that the Divisional Engineer was of the view "that there is no reasonable ground to believe that a penal offence has been committed by the Govt. servant as it does not envolve moral turpitude, falsification of Govt. records except unauthorised absence which has already been settled by AE Trunks/SDOT Rohtak later on." This position is confirmed by the statement given in the representation dated 6.8.1990 by the applicant to TDE, Rohtak in which leave sanctioned for the period from 30.11.1988 to 11.3.1989 and 20.3.1989 to 21.3.1989 has been mentioned. But in case the period under reference i.e. from 1.9.1986 to 16.11.1988 it is mentioned that the medical certificates are available with the department. Clearly no leave has been sanctioned for this period.

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The respondents have not filed their counter and their right was forfeited vide the order of this Tribunal dated 13.5.1993. No one is present on behalf of the respondents even today. In the absence of any counter, the averments made in the O.A. have to be accepted. The learned counsel for the applicant has drawn our attention to memo dated 8.1.1979 which shows that these periods have been treated as diesnon as the medical certificates ^{were submitted} ~~were~~ ^{by} very late and were not accepted. He has also shown us a copy of letter No. Q-184/238 dated 25.10.1988 sent by Asstt. Engineer Auto(Trunks), Rohtak to the applicant which indicates that the medical certificates from 1.9.1986 to 15.5.1988 ^{were} ~~was~~ received by them and returned by them. Basing his argument on the decision of the Chandigarh Bench of this Tribunal in O.A.No.121/87 in the case of Sh. Behari Lal Vs. Union of India decided on 9.2.1988 ^{he plead} ~~by~~ that it was incumbent upon the Respondents department to either accept the medical certificates submitted or to ask for a second medical opinion. In this case the medical certificates seems to have been rejected only on the ground that these were submitted later.

The application is, therefore, partly accepted with the following directions to the respondents:-

(i) The applicant shall be granted leave of the kind due for the period from 1.9.1986 to 16.11.1988 on the basis of the medical certificates submitted by him. The required payments shall be made to him within a period of 3 months from the date of this order.

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(ii) The respondents shall consider the point raised in the representation dated 15.3.1991 and pass a speaking order thereon within a period of 4 months from the date of communication of this order.

(iii) No interest shall be payable on the dues for the aforesaid period.

There shall be no orders as to costs.

B.N.Dhundiyal
(B.N. DHUNDIYAL)
MEMBER(A)

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